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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,060	09/18/2003	Robert C. Stolmcier	39015-18 (15278)	7706
54243	7590	07/11/2006	EXAMINER	
JOHN V. DANILUCK BINGHAM McHALE LLP 2700 MARKET TOWER 10 W. MARKET STREET INDIANAPOLIS, IN 46204			PASCUA, JES F	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/666,060	STOLMEIER, ROBERT C.	
	Examiner	Art Unit	
	Jes F. Pascua	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/28/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 9 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to provide an adequate written description of the strips such that the slider is moveable off of the strips without damaging the strips.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 3-5, 9 and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, last line, "the top of said gusset" lacks antecedence.

In claim 9, the functional recitation that "said slider is moveable in the first direction off of said strips without damaging said strips" is indefinite because it is not supported by recitation in the claim of sufficient structure to accomplish the function.

Claims that have not been specifically mentioned are rejected since they depend from claims rejected under 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 and 3-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,325,543 to Ausnit and U.S. Patent No. 6,186,663 to Ausnit.

Ausnit '543 discloses the claimed device except for the first and second profiles having a slider. Ausnit '663 discloses that it is known in the art to provide the profiles of an analogous bag with a slider. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first and second profiles of Ausnit '543 with the slider of Ausnit '663, in order to facilitate interlocking and unlocking the first and second profiles.

As a note, applicant's recitation that the first and second profiles are "proximate" or "at" the "top edge" of the mouth does not require the first and second profiles to be

located above the top edge of the mouth. Nor does the recitation preclude the first and second profiles being attached below the top edge of the mouth.

Moreover, the side seal 52 of Ausnit '543 meets the recitation "the second end of the said first profile is attached to the second end of said second profile by an end stop" to the same degree applicant sets forth the metes and bounds of the term "end stop".

Regarding claim 10, the recitation "said strips being joined together at one end other than by interlocking of said strips" does not preclude the structure in Fig. 8 of Ausnit '543 which shows one end of the fastener strips being joined together not only by interlocking of the strips, but also by side seal 52.

Regarding claim 18, the bottom edge of window 36 in Fig. 3 of Ausnit '543 is located in a top portion of the container, thus meeting the recitation "a top edge which is lower than either of said profiles".

7. Claims 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,358,653 to Mock and U.S. Patent No. 6,325,543 to Ausnit.

Mock discloses the claimed device except for the side walls having a substantially flat bottom. Ausnit '543 discloses that it is known in the art to provide the side walls of an analogous container with a substantially flat bottom 12. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the side walls of Mock with the substantially flat bottom of Ausnit '543, in order to permit the container to be self-standing.

Regarding claims 12-14, Mock discloses the claimed device, as discussed above, except for the mouth and gusset having a peelable seal. Ausnit '543 discloses that it is known in the art to provide a peelable seal 26 across the mouth and gusset of an analogous bag. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the mouth and gusset of Mock with the peelable seal of Ausnit '543, in order to .

Response to Arguments

8. Applicant's arguments with respect to claims 1 and 3-24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

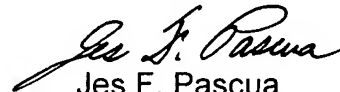
10. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jes F. Pascua
Primary Examiner
Art Unit 3727

JFP